

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA  
STATESBORO DIVISION

TONY SMITH,

Petitioner,

v. 6:12-cv-37  
6:06-cr-10

UNITED STATES OF AMERICA,

Respondent.

**ORDER**

Before the Court is Tony Smith's "Motion to Re-Open His Section § 2255." ECF No. 20. At bottom, Smith seeks to relitigate whether the vacatur of a state conviction used to justify a career offender enhancement to his sentence entitles him to resentencing. *See id.* at 2. The answer is a resounding no.


United States Sentencing Guideline § 4B1.1 provides a career offender sentencing enhancement when a defendant, at least eighteen years old, is convicted of a felony crime of violence or controlled substance offense, and "has at least two prior felony convictions of either a crime of violence or a controlled substance offense."

At the time of sentencing in this case, Smith had *five* previous convictions for crimes of violence or controlled substance offenses. *See* ECF No. 4 at 2 (citing probation officer's presentence investigation report); ECF No. 18 at 4-5 (citing same). That one of those convictions has since been vacated matters not to Smith's qualifications as a career offender. Smith would need to

have vacated at least three additional convictions for § 4B1.1 not to apply.

Smith continues to qualify substantively as a career offender. Reopening his § 2255 action would be utterly pointless. Smith's motion must be, and is, ***DENIED***.

This 4 day of April 2013.

  
B. AVANT EDENFIELD, JUDGE  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA